

REMARKS

Claims 1-41 and 44 are pending in the present application. Claim 1 has been amended, claims 42 and 43 have been canceled and claim 44 has been added. Claims 2 and 5-41 stand withdrawn from further consideration as being directed to a non-elected invention. Claims 1, 36 and 44 are independent. Reconsideration of this application, as amended, is respectfully requested.

Foreign Priority

The present application claims priority under 35 U.S.C. § 119(a) on The Netherlands Application No. 1018566, filed on July 17, 2001. **Applicants request the Examiner to acknowledge this claim to priority.** A certified copy of this application will be provided to the Examiner in due time.

Information Disclosure Statement

An information Disclosure Statement (IDS) was submitted to the U.S. Patent Office on February 23, 2005. However, Applicants have not received acknowledgement from the Examiner that the references submitted in this IDS were considered. **It is requested that the Examiner initial the PTO/SB/21 attached to the February 23, 2005 IDS and forward a copy with the next Office Communication to indicate consideration of the references listed thereon.**

Specification Amendments

The present specification has been amended to remove the references to the claims from the "SUMMARY OF THE INVENTION" section of the specification.

Election/Restriction

Claims 2 and 5-41 stand withdrawn from further consideration by the Examiner as being directed to a non-elected invention. Claims 42 and 43 have been canceled without prejudice to of disclaimer of the subject matter contained in these claims. On page 2 of the Examiner's Office Action, the Examiner states the following:

However, the Applicant's arguments are solely directed to U.S. restriction practice. The restriction and election put forth by the Examiner on 08-18-2005 is based on PCT Rule 13. The standards for lack of unity are different than those applicable in U.S. restriction practice. The Examiner does not have to prove or state that a different field of search would be necessary.

Applicants disagree with the Examiner's position. As the Examiner will note, the present application was not filed under 35 U.S.C. § 371 (National Phase Entry into the U.S.), but was filed under 35 U.S.C. § 120 (Continuation of the PCT). Since the present application was filed under 35 U.S.C. § 120, PCT Rule 13 is irrelevant to the present application. Therefore, the Examiner must follow U.S. Restriction and Election of Species practice.

In view of the above, Applicants hereby traverse the Examiner's Election of Species requirement. In the Response to Restriction/Election of Species Requirement dated September 15, 2005, Applicants elected Group 1, drawn to a method for processing poultry, consisting of claims 1-35

and 38-41. In addition, Applicants elected Species 4, claims 1, 3 and 4. However, Applicants submit that the Examiner should have examined many of the other dependent claims as well. Specifically, the Examiner should have examined dependent claim 9 (and dependent claims 10 (Species 8) or claims 11-13 (Species 9) or claims 14 and 15 (Species 10)), since these claims are not species of claims 3 and 4. Claim 9 is simply directed to another aspect of the present invention that should have been examined by the Examiner. In addition, the Examiner should have examined dependent claims 21 and 22 (Species 11) and dependent claim 23 (and one of dependent claim 24 (Species 12) or claims 25 and 26 (Species 13) or claims 25 and 27 (Species 14)). Furthermore, the Examiner should have examined dependent claim 29 and one of Species 15-21.

Nevertheless, Applicants respectfully submit that independent claim 1 is generic to the present invention. In view of this, once independent claim 1 is found to be allowable, all of the non-elected claims that include the limitations of independent claim 1 should be considered by the Examiner in the present application. Specifically, claims 2-35 and 38-41 should be considered by the Examiner once independent claim 1 is directed to allowable subject matter. For the below mentioned reasons, Applicants submit that claim 1 is in condition for allowance. Therefore, it is requested that the Examiner consider dependent claims 2-35 and 38-41.

With regard to additional independent claim 44, this claim is directed to a device for processing poultry. Since this device claim parallels pending method claim 1, it is believed that claim 44 is directed to the elected invention. In view of this, claim 44 should be examined in the present application along with claims 1-35 and 38-41.

Rejections Under 35 U.S.C. §103

Claims 1, 3 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Burnett, U.S. Patent No. 5,899,802 in view of Dew, U.S. Patent No. 4,196,221. This rejection is respectfully traversed.

An embodiment of the present invention is directed to a method for processing poultry. Independent claim 1 recites a combination of steps including the step of “exposing the dead poultry to an electrical stimulation for at least a first stimulation period downstream of the plucking device and upstream of a cooling device.” Applicants respectfully submit that the references relied on by the Examiner fail to teach or suggest the presently claimed invention.

In particular, Burnett is directed to a method of tenderizing poultry meat through constant electrical stimulation. As recognized by the Examiner, Burnett fails to disclose electrical stimulation of birds downstream of the picker 26. The electrical stimulation device is positioned upstream of the picker 26. However, the Examiner relies on the Dew reference to make up for the deficiencies of Burnett. Applicants submit that the modification proposed by the Examiner fails to arrive at the present invention as recited in independent claim 1.

Referring to the Dew reference, a device and method for spraying birds with electrically discharged particles is disclosed (see column 1, lines 7-9 and 57-64). This device can be applied for reducing water usage (see column 1, line 49) and for cooling of birds after the evisceration thereof (see column 1, line 37). The Examiner discusses on page 2 of the Office Action that it would be obvious to modify Burnett in order to reduce the amount of water used. However, in Burnett, only the devices shown in Figures 4d and 4e use water. The other devices shown in Burnett in Figures 2a-

2f, 3a-3f, 4a, 4b, 4c, 4f and 4g do not use water. However, even if it would be obvious to modify the device of Figures 4d and 4e according to Dew, then this would not result in a device according to the limitations of claim 1, because the electrical stimulation device 10 of Burnett would still be positioned upstream of the picker 26, and thus not result in the exposure of the poultry downstream of the plucking device to an electrical stimulation as in the presently claimed invention.

Furthermore, if one having ordinary skill in the art were to apply the teachings of Dew to the apparatus of Burnett, he would not position the spraying device of Dew downstream of the picker 26 of Burnett. In Dew, it is indicated that the spraying of the bird with electrically charged particles is performed "at about the same time" as the picking of the bird by blowing of compressed air on the bird (see column 3, lines 16-26 of Dew). See also column 6, lines 43-46 of Dew, wherein it is disclosed that the spraying and picking are performed at the same time: "in order to achieve at least partially the defeathering of the poultry, jets for the projection of compressed air can be joined to the water sprays." Thus, Dew does not teach the electrical stimulation downstream of the plucking device as in the presently claimed invention.

In addition, in the Examiner's Office Action, the Examiner asserts that Dew discloses electrical stimulation of birds "before or during chilling." Specifically, column 3, lines 62-63 indicate that the device of Dew is "most especially suitable for scalding and/or chilling of poultry." In view of this, Dew only discloses electrical stimulation during the scalding process or during the chilling process. Referring to Figure 1 of Burnett, any possible modification of Burnett in view of Dew would therefore include an electrical stimulation in the scalding 25 or in the chiller 38. In view of this, the modification proposed by the Examiner fails to disclose electrical stimulation

“downstream of the plucking device and upstream of the cooling device” as recited in independent claim 1 of the present invention. In view of this, the Examiner’s rejection is improper and should be withdrawn.

With regard to dependent claims 3 and 4, Applicants respectfully submit that these claims are allowable due to their respective dependence upon allowable independent claim 1, as well as due to the additional recitations in these claims.

In view of the above remarks, Applicants respectfully submit that claims 1, 3 and 4 clearly define the present invention over the references relied on by the Examiner. Accordingly, reconsideration and withdrawal of the Examiner’s rejection under 35 U.S.C. § 103 are respectfully requested.

Additional Claim

Additional independent claim 44 has been added for the Examiner’s consideration. Applicant respectfully submits that claim 44 is allowable for the same reasons mentioned above with regard to independent claim 1.

Favorable consideration and allowance of additional claim 44 are respectfully requested.

CONCLUSION

All the stated grounds of rejection have been properly traversed and/or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently pending rejections and that they be withdrawn.

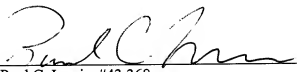
It is believed that a full and complete response has been made to the Office Action, and that as such, the Examiner is respectfully requested to send the application to Issue.

In the event there are any matters remaining in this application, the Examiner is invited to contact Paul C. Lewis, Registration No. 43,368 at (703) 205-8000 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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